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UNIVERSAL CITY STUDIOS, INC.,

Plaintiff-Appellant,

-against- Docket No. 84-7095

NINTENDO CO. LTD. and NINTENDO
OF AMERICA, INC.,

Defendants-Appellees.
-x

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Appellees
Nintendo Co. Ltd.
Nintendo of America, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
UNIVERSAL CITY STUDIOS, INC.,	:	
	:	
Plaintiff,	:	82 Civ. 4259 (RWS)
	:	
-against-	:	AFFIDAVIT OF
	:	<u>CAROLINE A. RIGGIO</u>
NINTENDO CO., LTD. and	:	
NINTENDO OF AMERICA, INC.,	:	
	:	
Defendants.	:	
-----x	:	

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

CAROLINE A. RIGGIO, being duly sworn, deposes and says:

1. I am a law clerk at the law firm of Mudge Rose Guthrie Alexander & Ferdon, attorneys for defendants Nintendo Co., Ltd. and Nintendo of America, Inc. I make this affidavit in support of defendants' motion pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment dismissing the complaint of Universal City Studios, Inc. ("Universal") in this action.

2. I was asked to conduct a search for the words King Kong in various computer information services. I consulted the following services during this search: the Nexis library of Lexis, a computer assisted legal research service which contains articles from various newspapers dating from 1977 and articles from various magazines dating from 1975; the New York Times Information Service which contains New York Times articles dating from June 1, 1980; and, DIALOG a database retrieval service.

3. I relied primarily on the Nexis Library and the New York Times services. Copies of the articles obtained from these searches are annexed to this affidavit.

4. In addition to the references obtained from the computer-based searches, various uses of the words King Kong were also found in current newspaper articles. Copies of these articles are annexed to this affidavit.

5. The following references, which range from nicknames for baseball players to adjectives for omelets, were obtained and have been categorized in the following manner: (a) general uses of the King Kong name; (b) general uses of graphic representations of King Kong; (c) King Kong as a metaphor for size; (d) King Kong as a metaphor for strength; (e) King Kong as a metaphor for disaster; (f) King Kong as a metaphor for achievement; (g) King Kong as a sexual metaphor; (h) analogies to the King Kong theme.

General Uses Of The King Kong Name

6. The name King Kong has been used by various individuals or entities as, inter alia, a nickname, a name for animals, a name for products, a name for literary characters, and as part of song titles.

7. Several sports figures have been nicknamed "King Kong," including: Charlie King Kong Keller, the great Yankee slug-ging outfielder, The Washington Post, May 1, 1977 (Ex. 1); N.Y. Times, § 11, N.J., p. 35, March 28, 1982 (Ex. 2); U.P.I.,

May 30, 1982 (Ex. 3); A.P., May 12, 1982 (Ex. 4); The Washington Post, July 24, 1982 (Ex. 5); The Washington Post, August 21, 1981 (Ex. 6); The Washington Post, April 22, 1979 (Ex. 7); The Washington Post, May 1, 1977 (Ex. 8); The Washington Post, May 11, 1978 (Ex. 9); The Washington Post, September 23, 1978 (Ex. 10); Dave King Kong Kingman, another power hitter, Boston Herald, March 16, 1983 (Ex. 11); U.P.I., March 15, 1983 (Ex. 12); U.P.I., February 28, 1981 (Ex. 13); The Washington Post, April 2, 1977 (Ex. 14); The Washington Post, February 26, 1978 (Ex. 15); The Washington Post, August 26, 1979 (Ex. 16); U.P.I., March 14, 1981 (Ex. 17); The Washington Post, September 29, 1979 (Ex. 18); The Washington Post, April 10, 1980 (Ex. 19); The Washington Post, July 1, 1980 (Ex. 20); N.Y. Times, § 1 p. 32, July 24, 1982 (Ex. 21); The Washington Post, April 1, 1979 (Ex. 22), April 2, 1978 (Ex. 23), September 21, 1977 (Ex. 24), April 3, 1977 (Ex. 25); Jerry King Kong Keller, a minor league home run hitter, U.P.I., July 20, 1981 (Ex. 26); Jerry King Kong Korab, a hard checking hockey defenseman, The Washington Post, February 19, 1977 (Ex. 27); The Washington Post, February 19, 1982 (Ex. 28); The Christian Science Monitor, February 6, 1980 (Ex. 29); N.Y. Times, § C p. 1, August 23, 1982 (Ex. 30); and Rick Robey and Mike Phillips, two 6'-10" basketball players for Kentucky who were referred to as King and Kong, The Washington Post, January 10, 1978 (Ex. 31).

8. The King Kong name has also been used as a nickname for non-athletes. For example: a prison guard in Argentina calls himself King Kong, A.P., May 12, 1979 (Ex. 32); Assadullah Sarwari,

while serving as security chief under the late President Mohammed Nur Taraki of Afghanistan, was given the nickname King Kong because of executions and tortures carried out under his reign, A.P. August 17, 1980 (Ex. 33); and Kingman Brewster, former president of Yale, has been dubbed Kingman Kong, N.Y. Times, § 7 p. 16, March 29, 1981 (Ex. 34).

9. Animals as well as humans have been accorded the King Kong appellation, for instance: a monkey used in a NASA spacelab experiment was named King Kong, Aviation Week and Space Technology, June 27, 1977 (Ex. 35); a racehorse was named King Kong II, Reuters, Ltd, March 27, 1980 (Ex. 36); and two chimpanzees that escaped from the Central Park Zoo were described as "two pint-sized King Kongs." A.P., May 24, 1982 (Ex. 37).

10. King Kong has been used as name for literary works, works of art and literary characters, for example: a poem by Ed Meek was entitled "King Kong and the Pilot," Paris Review, Fall, 1976 (Ex. 38); an article in Issue No. 14 of the American Review was entitled "King Kong: A Meditation", The Washington Post, December 25, 1977 (Ex. 39); a neo-Expressionist painter, David Salle, named one of his works, which depicts two nude figures walking on the beach "King Kong", N.Y. Times, § C, p. 1, February 18, 1983 (Ex. 40); Peter Maas, in his novel Made in America, named a notorious Hoboken loan shark and enforcer "Albert King Kong Karpstein", Newsweek, September 3, 1979 (Ex. 41); and Slim Pickens played a character called Major King

Kong in the movie "Dr. Strangelove," A.P., September 11, 1981 (Ex. 42).

11. The name King Kong has been used in the music field, titles of songs include "King Kong, Your Song" by Bobby (Boris) Pickett, The Washington Post, October 27, 1982 (Ex. 43); "Old King Kong" by the country music singer George Jones, The Washington Post, January 18, 1979 (Ex. 44); and "Good King Kong Looked Out" in the "Concert of Choral and Christmas Carols", The Washington Post, October 14, 1977 (Ex. 45). King Kong has also been mentioned in a song by ABBA called "Waterloo", The Washington Post, October 3, 1979 (Ex. 46).

12. Various manufacturers have used the name King Kong for their products such as: King Kong perfume by Kenzo, N.Y. Times, § C, p. 12, August 27, 1980 (Ex. 47); The Washington Post, April 15, 1979 (Ex. 48), October 21, 1979 (Ex. 49); a King Kong pumping unit, Oil & Gas Journal, July 23, 1979 (Ex. 50); a King Kong Play Set, The Washington Post, January 28, 1980 (Ex. 51); King Kong jewelry, The Washington Post, September 11, 1977 (Ex. 52); and King Kong erasers, A.P., April 12, 1977 (Ex. 53).

13. The name King Kong has also been used as a name of an amusement ride for children, "Uncle Ernie's King Kong Ride" (a huge see-saw), N.Y. Times, § B, p. 2, June 16, 1980 (Ex. 54); a race car, "King Kong"; U.P.I., May 28, 1982 (Ex. 55); a line of single engine airplanes dubbed "King Kong Singles", Flying, February, 1977 (Ex. 56); a zoo in Tampa, Florida, "King Kong Zoo", A.P., August 23,

1980 (Ex. 57); and a nightclub in Mexico City, "King Kong". Latin American Weekly Report, February 11, 1983 (Ex. 58).

General Uses Of Graphic Representations of King Kong

14. King Kong has "appeared" at political fund raisers, at concerts, in parades, on paintings, on socks, as sculptures, as toys and in a variety of other forms and manners.

15. Graphic representations of King Kong have been used in connection with various products and toys: a company called Hot Sox printed images of King Kong on its socks, N.Y. Times, § 1, p. 48, February 26, 1983 (Ex. 59); giant stuffed replicas of King Kong were awarded in the New York Road Runners Club "Run-Up" race, U.P.I., February 12, 1981 (Ex. 60); N.Y. Times, § C, p. 2, February 8, 1982 (Ex. 61); a designer created limited edition toy Empire State Buildings complete with King Kong, N.Y. Times, § C, p. 3, December 4, 1980 (Ex. 62); Pedigree produced an Empire State Building model complete with King Kong, N.Y. Times, § C, p. 17, December 1, 1980 (Ex. 63); a Chicago taxicab driver placed a toy King Kong in his rear window which shakes his hairy fists at errant drivers, A.P., August 31, 1979 (Ex. 64); and a mayoral candidate in New Orleans who promised to protect the gorillas in the city zoo from vandals wore a campaign button with a photograph of King Kong, The Washington Post, October 1, 1977 (Ex. 65).

16. Replicas of King Kong have appeared in parades and amusement parks, for example: a King Kong float appeared at a New Orleans carnival, A.P., February 18, 1980 (Ex. 66); a haunted zoo in Kansas City, Missouri features a huge moving model of King Kong reaching for the passenger train as it passes over a railroad trestle, U.P.I., September 8, 1982 (Ex. 67); and, King Kong swiping at a Piper Cub was displayed in Washington at an exhibit for children, The Washington Post, September 4, 1981 (Ex. 68).

17. King Kong has appeared in paintings done by various artists, for example: one artist portrayed a "wide-eyed businessman" viewing a window washer standing on King Kong's palm, N.Y. Times, § 7, p. 14, November 29, 1981 (Ex. 69); Tim Prentice portrays King Kong surmounting St. Bartholomew's Byzantine dome in his book St. Bart's Sketchbook, N.Y. Times, § 2, p. 3, January 18, 1981 (Ex. 70); and two artists portrayed "campy, King Kong apes" in one painting, N.Y. Times, § 2, p. 31, November 14, 1982 (Ex. 71).

18. King Kong has also been used for sculptures by Mr. Benedict, N.Y. Times, § C, p. 6, June 30, 1981 (Ex. 72); by Gary Schatmeyer who made a fabric sculpture of King Kong on the Chrysler building clutching a model car instead of Fay Wray, N.Y. Times, § 11, Long Island, p. 35, December 13, 1981 (Ex. 73); and by Bill Lombardo, who sculpted an image of "his cherubic, mustachioed face atop the body of King Kong." The Washington Post, September 15, 1979 (Ex. 74); January 28, 1978 (Ex. 75).

19. Architect Nancy Renfro created underground twin towers in the shape of King Kong. The Washington Post, December 23, 1977 (Ex. 76).

20. King Kong appears in one of Donald Barthelme's short stories called "The Party" in which he makes an entrance to a cocktail party by climbing through a window, N.Y. Times, § C. p. 1, September 16, 1981 (Ex. 77), Newsweek, October 12, 1981 (Ex. 78). And, an illustration of King Kong appears in a book entitled A Look at Greek Mythology, The Washington Post, January 10, 1982 (Ex. 79).

21. King Kong has also appeared at several parties and promotional events through costumes worn by: a racing official at a pre-Kentucky Derby party, The Washington Post, May 2, 1979 (Ex. 80), The Washington Post, May 7, 1979 (Ex. 81); a person at a Democratic fundraiser for Mark Green held in the Empire State Building, The Washington Post, August 13, 1980 (Ex. 82); actress Elizabeth Lorment who arrived at the Sixth Annual Empire State Run Up race wearing running shorts and a King Kong costume; U.P.I., February 17, 1983 (Ex. 83); people attending a Halloween party, The Washington Post, November 2, 1981 (Ex. 84); and by people hired to skate around as gorillas during a King Kong promotion night used to draw fans to the Washington Capital's hockey games, The Washington Post, December 6, 1977 (Ex. 85); The Washington Post, June 18, 1978 (Ex. 86).

22. King Kong has made appearances at concerts, in nightclub acts, and at exhibitions. Singer Bette Midler appeared on a Broadway stage in the "fist of a giant King Kong," A.P., December 5,

1979 (Ex. 87) and earlier on stage in "the Giant Grip of King Kong atop the Empire State Building." Newsweek, April 28, 1975 (Ex. 88). During a concert by the Jimmy Castor Bunch, a person appeared on the stage as a dancing King Kong, The Washington Post, July 26, 1977 (Ex. 89). In a show by John Noble at the museum of the City of New York, an "outsize King Kong" doll appeared straddling the top of the Empire State Building holding Fay Wray "who waves the stars and stripes." N.Y. Times, § 2, p. 30, May 10, 1981 (Ex. 90).

King Kong As A Metaphor For Size

23. King Kong has been used as a metaphor for someone or something of large or monstrous proportions.

24. Ronald Reagan was described as "a man with shoulders as broad as King Kong's." The Washington Post, November 6, 1980 (Ex. 91).

25. The "Big Federal Government" has been dubbed the "King Kong of Federal Waste." The Saturday Evening Post, Jan./Feb. 1977 (Ex. 92).

26. Double trailer-truck rigs have been called "King Kongs." Tribune-Democrat, Johnstown, Pa., April 12, 1983 (Ex. 93).

27. A 30-foot high inflatable bottle of Windsor Canadian Whiskey was said to be "Kong-size." U.P.I., April 6, 1983 (Ex. 94).

28. A primitive African art collector was likened to King Kong because "when he stands at his desk he dominates the room like

King Kong over Manhattan." The Christian Science Monitor, February 19, 1981 (Ex. 95).

29. Implying that tall persons are not easily mugged, an author stated, "If there were a test for muggability, my score would probably fall somewhere between the Incredible Hulk's and King Kong's". The Washington Post, January 4, 1982 (Ex. 96).

30. A member of the American Newspaper Publisher's Association, commenting on the Association's efforts to curtail the Bell System's publishing activities stated, "Can you imagine trying to jump up and rip out King Kong's tongue?" National Journal, June 6, 1981 (Ex. 97).

31. A situation where a small prison guard was guarding a tall, athletic prisoner was analogized to "having Mickey Mouse sitting watch over King Kong", Newsweek, September 20, 1976 (Ex. 98).

32. A Rumanian discus thrower was said to be "walking around like King Kong." When asked how Poland was, "he shrunk to size." N.Y. Times § D, p. 23, June 17, 1982 (Ex. 99), § D, p. 1, January 17, 1983 (Ex. 100).

33. Wyoming basketball coach Jim Brankenburg, discussing his need for height in the front court, stated that in the forward category he would like a "King Kong." U.P.I., March 18, 1981 (Ex. 101).

34. A basketball game between Virginia and Georgetown was "billed as the greatest showdown of giants since King Kong met Godzilla." U.P.I., January 2, 1983 (Ex. 102).

35. Discussing another country's olympic team and program, one writer stated, "They pay their athletes and shoot their women up with hormones so they look like King Kong in skirts." The Washington Post, January 10, 1980 (Ex. 103).

36. Discussing his need to diet, one individual stated he would curb his intake so as to "maybe slim down to the size of King Kong." The Washington Post, July 27, 1978 (Ex. 104).

37. Large meal proportions have been referred to as "King Kong meals," The Washington Post, August 30, 1979 (Ex. 105), and "of King Kong proportions." The Washington Post, March 3, 1977 (Ex. 106).

38. An omelet using many eggs has been described as a "King Kong" omelet, The Washington Post, September 30, 1981 (Ex. 107), and the world's largest egg cream was described as a "110-gallon caloric disaster big enough for King Kong." A.P.I., June 7, 1980 (Ex. 108).

39. The Washington monument has been nicknamed "King Kong's Pencil," The Washington Post, January 23, 1981 (Ex. 109).

40. Describing a Christmas tree purchased by her husband who was sent out to buy a "nice little tree," a writer commented that he returned with a tree only "King Kong's family would love." N.Y. Times, § 11, Westchester, p. 23, December 20, 1981 (Ex. 110).

41. A reporter, commenting on a piece of cooling equipment used in connection with the space shuttle Columbia, stated, "If

King Kong had a vacuum cleaner, it probably would look like that." U.P.I., April 14, 1981 (Ex. 111).

42. A Volkswagen camper was said to look like King Kong's handball. The Washington Post, July 21, 1978 (Ex. 112).

King Kong As A Metaphor For Strength

43. King Kong has been used as a metaphor to describe strong individuals or situations requiring great strength.

44. Baseball writers often utilize King Kong as a metaphor for strength. For instance, referring to the hitting power of the California Angels, one commentator stated: "They deserve to have nine guys on that ballot [All-Star] - with the Angels, King Kong after King Kong comes up." U.P.I., June 26, 1982 (Ex. 113). Similarly, one writer said of the Miami Hurricanes, a minor league team that changed its batting style from scratch singles to long balls, "In one year Miami's Punch and Judy Act turned into King Kong." U.P.I., May 31, 1982 (Ex. 114). Describing Pedro Guerrero of the Los Angeles Dodgers, a strong, natural hitter, one writer stated, "Physically Pedro is King Kong through the shoulders and chest (an NFL line-backer)..." The Christian Science Monitor, September 14, 1982 (Ex. 115). And, describing the standoff between the Players' Association and the Owners' Committee during the strike, one writer said, "a tug-of-war between King Kong and Godzilla has been established..." U.P.I., July 9, 1981 (Ex. 116).

45. King Kong has also been used as a metaphor for strength in the football and basketball worlds. Discussing his team's need for fast receivers to neutralize strong defensive linemen, a college coach stated, "The pass is a way to finesse the King Kongs." U.P.I., August 21, 1981 (Ex. 117). One player, commenting on Pittsburgh's offensive players stated "All of their guys weigh 280 and can bench press the world. They have hands like King Kong and it is hard to get away from them." U.P.I., December 29, 1982 (Ex. 118). Describing a slam dunk made by one player, a writer stated, "But if this was one of his 'Go-Rilla' jobs, call it King Kong." The Washington Post, November 15, 1979 (Ex. 119). Darryl Dawkins also compared himself to King Kong stating, "I call that my Dino DeLaurentiis dunk.... He made 'King Kong,' right? Well, if Kong played ball, that's how hard he would throw it down." Newsweek, May 23, 1977 (Ex. 120).

46. On the tennis circuit, one writer referred to the forehand of Sue Barker as "worthy of King Kong." The Washington Post, January 7, 1977 (Ex. 121).

47. King Kong has been widely used in the world of boxing. Describing his opponent one boxer stated, "[Arguello] is like King Kong: He hits harder than any puncher in my division." Reuters, Ltd., November 13, 1982 (Ex. 122). Similarly, Thomas Hearns, commenting on middleweight champion Marvin Hagler, said, "Man, you'd think he's King Kong or Gargantua or something like that." U.P.I., April 8, 1982 (Ex. 123). Another fighter stated that

attempting to take the middleweight title from Hagler was "like taking the girl away from King Kong." Sunday Enterprise, February 13, 1983 (Ex. 124). Commenting on his stamina and boxing style, Sugar Ray Leonard stated: "I just keep on coming on strong. Put King Kong in front of me and I'll still keep coming." Newsweek, December 10, 1979 (Ex. 125). Discussing his defeat of Muhammed Ali, Leon Spinks said, "...that don't make me King Kong. Anybody could beat Ali." The Washington Post, June 11, 1981 (Ex. 126). One trainer said of his boxer, "Alexis [Arguello] hit him hard enough to stop King Kong and he didn't go down." U.P.I., November 13, 1982 (Ex. 127). Boxer Ruben Castillo said of boxer Juan LaPorte, "I respect Laporte as a fighter, but he's no King Kong." U.P.I., February 19, 1983 (Ex. 128). When questioned about his next opponent after successfully defending his W.B.A. lightweight title, Arturo Frias answered: "I'll fight King Kong in a couple of days." U.P.I., February 1, 1982 (Ex. 129). When questioned about possible future opponents, Saad Muhammad responded, "I don't care, I'll fight King Kong." U.P.I., February 28, 1981 (Ex. 130). Another boxer, Dwight Braxton, after winning a bout, said, "Bring on King Kong." N.Y. Times, § C, p. 3, June 1, 1981 (Ex. 131).

48. Other "battles" with powerful participants have invoked the King Kong metaphor. A band of urban "gorillas" who crusade for law and order have been analogized to King Kong on a white horse. The Washington Post, February 14, 1982 (Ex. 132). The Maryland Senate Constitutional and Administrative Law Committee was

described as "resembling an epic battle from 'King Kong', with two powerful giants -- the railroad lobby and the truckers -- pitted against each other." The Washington Post, February 22, 1978 (Ex. 133). One C.P.A., responding to a suggestion that independent accounting consultants work with the government against the "Big Eight," stated, "Taking on the government as a partner to clobber a competitor... seems like Little Red Riding Hood asking King Kong for help against the wolf!" Business Week, April 18, 1977 (Ex. 134). And in the film the Great Santini, Santini's son stated, "I was hoping we'd all go to war again so King Kong out there can fight someone else besides me." Manchester Guardian Weekly, March 15, 1981 (Ex. 135).

49. Commenting on fear of strong government regulation, one former head of the Federal Insurance Administration said that industry "'would rather be regulated by 50 monkeys than King Kong.'" The Washington Post, January 4, 1982 (Ex. 136).

50. The heavy-handed tactics of Soviet customs inspectors led one writer to dub the Soviet airport search the "King Kong caress." Express/News, San Antonio Texas, January 20, 1983 (Ex. 137).

51. A shop owner, complaining of rampant burglaries in his area, stated that burglars "managed in a King Kong type manner to bend the old iron grates and slip through." N.Y. Times, § 1, p. 25, August 28, 1982 (Ex. 138).

52. The powerful 262-horsepower V-12 engine of the Jaguar XJ-S enables the car to operate "with King Kong performance." Oregonian, January 29, 1983 (Ex. 139).

53. The space shuttle Columbia's Canadian arm was said to have "a grip like King Kong." U.P.I., June 20, 1981 (Ex. 140).

King Kong As A Metaphor For Disaster

54. King Kong has often been used as a metaphor for disasters or troublesome situations.

55. A recent cold wave was described as "... the King Kong of cold waves, a monster from the top of the world that held the eastern United States in a deadly bear hug." A.P., January 24, 1982 (Ex. 141).

56. The destruction done to Mobile, Alabama as a result of a storm was described by a citizens band radio operator as looking "like King Kong took a stroll through downtown." A.P., September 14, 1979 (Ex. 142).

57. A survivor of a plane crash described the plane as looking "like King Kong had grabbed it." The Washington Post, April 24, 1978 (Ex. 143).

58. The el crash in Chicago in which cars fell to the street or were left hanging from the tracks was described as "like something out of King Kong." Newsweek, February 14, 1977 (Ex. 144).

59. A menacing vine growing in the South is referred to as "King Kong Kudzu." Smithsonian, Vol. 7, 1976 (Ex. 145).

60. The electronic fund transfer system "has been called a technology in search of a market; or perhaps even more aptly, King Kong in search of a trainer." American Banker, March 29, 1979 (Ex. 146).

61. An airline pilot, commenting on people's fear of flying, stated, "Others are afraid of giving up control of their lives to a stranger. For all they know, it could be King Kong in the cockpit." A.P., October 18, 1978 (Ex. 147).

62. During the 1980 presidential election one writer stated: "If the election were held today, Carter wouldn't draw 20 percent of the vote in the state even if the Republicans ran King Kong." U.S. News & World Report, March 20, 1978 (Ex. 148).

63. A political figure in City Hall, Utica, New York, has been described "as something of a political King Kong, who senselessly stirs up trouble." A.P., August 25, 1977 (Ex. 149).

64. Hamilton Jordan was described as "qualified for the role of King Kong," at a Carter affair described as a political horror story. A.P., July 21, 1979 (Ex. 150).

65. One writer said of the British government that it had handled the Northern Ireland situation with "the political finesse of King Kong trying to board a subway train." Reuters Ltd., August 31, 1979 (Ex. 151).

66. Commenting on the FBI another writer said: "[Washington] is very sensitive about the FBI, having lived with it

as the natives did with King Kong - you never know when it's going to turn on you." The Washington Post, February 7, 1980 (Ex. 152).

67. In another vein, the Pompidou Center in France has been criticized as an "architectural King Kong," The Washington Post, February 1, 1977 (Ex. 153); one executive's messy desk, when compared with a normally messy desk was described as "King Kong next to a chimpanzee," National Journal, June 6, 1981 (Ex. 154); and Americans abroad have been described as having King Kong mannerisms. U.P.I., October 25, 1981 (Ex. 155).

King Kong As A Metaphor For Achievement

68. King Kong has been used as a synonym for someone or something that has risen to the top, achieved prominence.

69. Referring to Nolan Ryan, the strikeout king of baseball, one batter who struck out three times in one game against Ryan stated, "'He's King Kong as far as I'm concerned,'" and a writer elaborated, stating: "And on those lustrous nights he really is King Kong, Ryan is the ultimate pitcher, the man who has taken a great gift and perfected it, if only for one evening." The Washington Post, August 31, 1977 (Ex. 156).

70. Describing his coach's support of him, one kicker said, "He made me feel like I was King Kong." The Washington Post, November 20, 1977 (Ex. 157).

71. The success of the Washington Bullets on their home court as opposed to their failure on opponents' home courts led to

the comment that they "play like King Kong at home and Mr. Muggs on the road." The Washington Post, February 20, 1978 (Ex. 158).

72. In a headline in The Washington Post, a successful ping pong player named Monty was referred to as "The King Kong of Ping Pong." The Washington Post, April 14, 1977 (Ex. 159).

73. After winning the 1980 presidential election, Mr. Reagan stated: "A little while ago they were calling out "Bonzo"... they'd better be careful. Bonzo grew up to be King Kong." N.Y. Times, §, p. 36, November 2, 1980 (Ex. 160), The Washington Post, November 2, 1980 (Ex. 161).

74. Clement's role in the presidential campaign was described by Democrat John Hill as "He'll be King Kong for a while now." U.P.I., November 5, 1980 (Ex. 162).

75. Jan Christian Smuts has been described as the "King Kong of Guerilla-dom." N.Y. Times, § 7, p. 14, January 24, 1982 (Ex. 163).

76. An editor of Le Monde, Mr. Hersant, was called the "King Kong of the press" because of his effective cost-cutting techniques. The Economist, August 28, 1976 (Ex. 164).

77. Hal Holbrook's performance in "Mark Twain Tonight" was described as being "to the usual run of these entertainments what King Kong is to the usual run of monkeys." The Washington Post, April 16, 1981 (Ex. 165).

78. Entertainer Peter Allen, discussing his change in format, stated, " I've cut back on the gimmicks . . . If you have

King Kong in the first act, what do you put in the second act?" The Washington Post, July 31, 1982 (Ex. 166).

79. Commenting on an appearance by Bill Murray on the David Letterman Show, one writer stated, "the spectacularly unpredictable Bill Murray, one of America's most unassuming millionaires, was in evidence the way, say, King Kong was once in evidence atop the Empire State Building". The Washington Post, February 3, 1982 (Ex. 167).

80. An oil field executive was described as believing he's King Kong when providing helpful answers to customers. Business Week, February 16, 1981 (Ex. 168).

81. In a comment on the record industry's need for a hit record the industry was described as needing "a veritable King Kong" to get it out of the summer doldrums. Newsweek, August 13, 1979 (Ex. 169).

82. Beethoven's "Hammerklavier" Sonata has been referred to as the "King Kong of piano literature." The Washington Post, August 6, 1977 (Ex. 170).

83. The "rites" of the commercial theater have been described as including "spear dances invoking the King Kong of supersuccess. . ." Newsweek, November 8, 1976 (Ex. 171).

84. The Club at the World Trade Center was analogized to King Kong because it "promised to be the biggest thing on a high rise building since King Kong." Business Week, March 8, 1976 (Ex. 172). In a similar usage, the sexually abused child has been referred to as

the "current King Kong of social sensationalism." The Washington Post, January 30, 1977 (Ex. 173).

King Kong As A Sexual Metaphor

85. King Kong has often been used as a metaphor to describe various sexual encounters or experiences.

86. According to the Wall Street Journal, Mrs. Harry Helmsley "makes Harry feel like King Kong." Wall Street Journal, December 28, 1982 (Ex. 174).

87. A "bewitching, erotic princess in a picture book for mature spectators" was analogized as a "Fay Wray not averse to King Kong." N.Y. Times, § 11, N.J. p. 10, April 12, 1981 (Ex. 175).

88. Describing a romantic scene in a library, a writer stated "He occupied a desk near a lissome reader, fell for her like King Kong." The Washington Post, February 14, 1980 (Ex. 176).

89. Describing her feelings upon assuming the traditional male role of initiating a flirtatious encounter, a participant in an experiment on sexual stereotypes said she had a feeling of power like "I was King Kong." N.Y. Times, § B, p. 16, December 1, 1980 (Ex. 177).

90. Battered wives during the early stages of their ordeal are said to romanticize the male violence into "the King Kong mystique: I maul you therefore I love you." N.Y. Times, § C, p. 2, March 11, 1982 (Ex. 178).

91. Describing the mating habits of gorillas, one writer stated: "The male gorilla is extremely loath to make advances even to female gorillas - and is most unlikely to indulge in King Kong passes at nubile females." Newsweek, August 22, 1977 (Ex. 179).

92. A trio of great white whales making love was described as "a King Kong - like sexual feat that silenced the mutterers." The Washington Post, April 17, 1977 (Ex. 180).

Uses Of The King Kong Theme

93. Many movies and television shows have used the beauty and the beast and the monster themes which pervade the King Kong movies.

94. An early TV daytime serial involved a woman being kidnapped by a gorilla, a theme reported to be "probably stolen from King Kong." The Washington Post, February 21, 1977 (Ex. 181).

95. Producer John Gay made a television version of "The Hunchback of Notre Dame" which was compared to "the story of the 'Beauty and the Beast' [and]... 'King Kong'." A.P., February 4, 1982 (Ex. 182); and was described as "almost a rip-off of King Kong, featuring a more evolutionary advanced anthropoid." A.P., February 10, 1982 (Ex. 183).

96. To convey its message that the divorce process turns people into "monsters," the Cincinnati Bar Association made a television commercial which portrayed King Kong divorcing Mrs. Kong. A.P., March 29, 1979 (Ex. 184).

97. The movie "Warlords" was reported as being an overtouted monster picture like the remake of King Kong, starring monsters which "actually recall the ravenous charm of the original Kong: they regard humans as munchies." The Washington Post, June 10, 1978 (Ex. 185).

98. Commenting on King Marke in "Tristan and Isolde" an opera director stated: "[a designer] wanted to present King Marke as a cruel man, a bald-headed, evil father-figure bent on destroying Tristan and Isolde, that is patently wrong. Marke is not a King Kong monster." N.Y. Times, § 2 p. 1 January 4, 1981 (Ex. 186).

99. The movie "The Beast" was described as a porn version of King Kong. The Washington Post, June 8, 1977 (Ex. 187). A reviewer of the same film states, "American sex fantasies are endearingly infantile - poor King Kong is a subway - smashing schlemiel who ides for love but never gets the girl." Newsweek, May 9, 1977 (Ex. 188).

100. A burlesque show containing a "new working of the legend of the Beauty and the Beast contains a dramatization of an ape raping a white woman," and the reviewer commented, "come to think of it, King Kong was never like this." The Washington Post, March 27, 1977 (Ex. 189).

101. One film critic hypothesized that every film ever made could be called a love story and asked: "Isn't King Kong merely a cautionary tale of unrequited love, of beauty toppling the beast?" The Washington Post, June 19, 1977 (Ex. 190).

102. Robert Bloch, author of Pyscho, said, "Most movie monsters over the years have personified in one form or another, lust amok; what was King Kong but a big hairy id?" The Washington Post, February 23, 1983 (Ex. 191).

Caroline A. Riggio
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Sworn to before me this
7th day of May, 1983.

Arthur M. Miller
Notary Public

ARTHUR M. MILLER
Notary Public, State of New York
No. 31-4701620
Qualified in New York County
Commission Expires March 30, 1985